

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11282 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KALUBHAI KHODABHAI BOHARIA

Versus

STATE OF GUJARAT

Appearance:

MR YATIN SONI for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive

detention dated 5th December, 1998 made by the Commissioner of Police, Rajkot City, under the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a property grabber within the meaning of Section 2 (h) of the Act. It is alleged that the petitioner has unauthorisedly occupied a piece of land belonging to the Municipal Corporation and has plotted it out into small pieces and given it to various persons on rent or on leave & licence without the authority of law. In this respect, eight offences punishable under Chapter XVII of the Indian Penal Code have been registered against the petitioner, which are pending investigation. The petitioner is also alleged to be a habitual offender and for that matter, a dangerous person within the meaning of Section 2 (c) of the Act. The petitioner is also alleged to be a headstrong person, carrying lethal weapons with him. Besides, two persons have given statements in respect of the nefarious activities of the petitioner and its adverse effect on public order. They have particularly referred to the incidents of 4th November, 1998 and 25th October, 1998 respectively. In both the incidents, the petitioner is alleged to have beaten the concerned witness in a public place and of having issued threats to the witnesses and the innocent members of the public gathered on the spot of the incident. The petitioner is also alleged to have used knife for creating terror. The petitioner's activities are, therefore, held to be prejudicial to the maintenance of public order. The detaining authority has recorded his subjective satisfaction in respect of the necessity to exercise power conferred under Section 9 (2) of the Act by withholding the names and other particulars of the witnesses. He has also recorded that large number of people are adversely affected on account of the illegal activities of the petitioner and such activities are likely to affect public order.

4. It is contended that three of the documents supplied to the petitioner alongwith the grounds of detention were in English and were illegible. A demand for translation of the said documents was, therefore, made under the representation dated 24th December, 1998, which is not acceded to. The petitioner is thereby deprived of his constitutional right of making an effective representation. It is also contended that though the detaining authority has relied upon as many as eight offences registered against the petitioner, he has

stated that the people are afraid of the petitioner and are not willing to give statement against him or to lodge a complaint against the petitioner. Hence, the statements made in the grounds of detention being self-contradictory, the subjective satisfaction recorded by the detaining authority is vitiated. It is also contended that the detaining authority having verified the statements of the witnesses on 5th December, 1998, has made the order of detention on the same date, and therefore, the verification recorded is not proper. Besides, inspite of the petitioner's request, the panchnama prepared in each of the aforesaid cases have not been furnished to the petitioner. The petitioner is also not supplied documents of the alleged transfer of the pieces of lands. In any view of the matter, the petitioner's activities cannot be said to be detrimental to the maintenance of public order.

5. The petition is contested by the learned AGP Mr. Patel. He has relied upon the communication dated 5th January, 1999. The said communication has been sent in answer to the representation made by the petitioner on 20th December, 1998. Under the said communication, the petitioner has been furnished the documents at pages 13, 14 and 15 duly translated into Gujarati. Besides, the petitioner has been informed that in none of the criminal offences registered against the petitioner, panchnama was prepared and, therefore, were not supplied to the petitioner.

6. The offences registered against the petitioner are in respect of the alleged fraud committed by the petitioner with the Corporation as well as the persons to whom he has transferred the pieces of lands for a price. It is, therefore, apparent that all the eight offences registered against the petitioner are connected with the petitioner's land grabbing activities. However, what is referred to by the detaining authority in the previous paragraph is in respect of the anti-social activities of the petitioner, apart from the land grabbing activities. I am, therefore, unable to agree that the statements made in the grounds of detention are self contradictory or that the satisfaction recorded by the detaining authority is vitiated. Further, it is apparent that upon the petitioner's request, the document in English were duly translated and were made available to the petitioner as soon as possible. It, therefore, cannot be said that the petitioner has been given documents in a language which is not known to him. The panchnama having not been prepared, the question of supplying them to the petitioner would not arise. It is also clear that the

pieces of land have been transferred by the petitioner to the ignorant individuals for a price, without any documents. The question of supplying of transfer documents should not arise. The detaining authority has categorically stated that he had summoned the witnesses before him for verification and has also recorded his personal satisfaction in respect of the statements made by the witnesses. I am unable to agree that the verification made by the detaining authority is not proper. This brings me to the contention that the petitioner's activities are not prejudicial to the maintenance of public order. The contention can hardly be accepted. The offences committed by the petitioner are self-speaking and the incidents referred to by the witnesses also reveal the criminal tendency of the petitioner. The activities of the petitioner in carrying lethal weapon and to use it to issue threats to the people who come in his way or who do not submit to his commands and for creating terror and a feeling of insecurity in the minds of the innocent people would certainly be prejudicial to the maintenance of public order. In my view, therefore, not only the petitioner is a dangerous person within the meaning of Section 2 (c) of the Act and the property grabber within the meaning of Section 2 (h) of the Act, his activities are also detrimental to the maintenance of public order. The order of preventive detention has, therefore, rightly been invoked against the petitioner. At last, Mr. Soni has contended that the representation made by the petitioner on 24th December, 1998 has not been attended to promptly and the continued detention of the petitioner is, therefore, vitiated. Mr. Patel, the learned AGP has referred to the records of the matter and has submitted that the representation made by the petitioner was received on 30th December, 1998. On 31st December, 1998, there being a meeting of the Advisory Board, the same was not considered. The representation was under active consideration of the Government at various levels on 1st and 2nd January, 1999 and 3rd January 1999 being a public holiday, the order was made on 4th January, 1999. Hence, in my view, the representation made by the petitioner has been dealt with promptitude and there being no laxity in considering the representation made by the petitioner, the continued detention of the petitioner cannot be vitiated or invalidated. No other ground is urged before me.

Petition is dismissed. Rule is discharged.

Prakash*

